

DISTRICT COURT OF GUAM

TERRITORY OF GUAM

ALEXANDER BLANCO KITANO,

Civil Case No. 04-00007

Petitioner,

vs.

ORDER

FRANK ISHIZAKI, Director, Department of
Corrections,


Respondent.

Petitioner Alexander Blanco Kitano filed a Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person in State Custody and a Motion to Proceed In Forma Pauperis. Prisoners in state custody who wish to challenge either the fact or length of their confinement in federal court by a petition for a writ of habeas corpus must first exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every issue they seek to raise in federal court. See 28 U.S.C. § 2254(b)(1)(A), (c); Duckworth v. Serrano, 454 U.S. 1, 3, 70 L. Ed. 2d 1, 102 S. Ct. 18 (1981). If available state remedies have not been exhausted as to all claims, the district court must dismiss the petition. See id. at 4-5.

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1 Petitioner claims that he has exhausted his administrative remedies. However, before
2 coming to federal court on habeas corpus he also must exhaust his state judicial remedies.
3 Accordingly, the present petition is unexhausted and must be dismissed. A dismissal for
4 failure to exhaust is without prejudice, however, and is not a bar to returning to federal court
5 after exhausting state remedies. See Johnson v. Lewis, 929 F.2d 460, 464 (9th Cir. 1991).
6 Accordingly, this petition is ORDERED DISMISSED WITHOUT PREJUDICE. Thus,
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9 Petitioner's Motion to Proceed In Forma Pauperis is ORDERED DENIED.

10 IT IS SO ORDERED this 14th day of May, 2004.

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14 ~~FRANCES M. TYDINGCO GATEWOOD~~
15 Designated District Judge
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25 Notice is hereby given that this document was
26 entered on the docket on 05/14/04.
27 No separate notice of entry on the docket will
28 be issued by this Court.

 Mary L. M. Moran
 Clerk, District Court of Guam

By:  05/14/04
 Deputy Clerk Date

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